



PATENT

Case Docket No. OPTIS.039A

Date: February 17, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Bernhard B. Sterling et al.
Appl. No. : 10/055,875
Filed : January 21, 2002
For : REAGENT-LESS WHOLE-
BLOOD GLUCOSE METER
Group Art Unit : 2877
Class/Sub-Class : 356-039000
Examiner : Roy M. Punnoose

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

February 17, 2004

(Date)

Mark J. Kertz
Mark J. Kertz, Reg. No. 43,711

TRANSMITTAL LETTER

MAIL STOP ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed for filing is the Issue Fee for the above-identified application:

- (X) Form PTOL-85.
- (X) A check in the amount of \$995 to cover the issue fee, publication fee, and advanced order of copies is enclosed.
- (X) Comments on Statement of Reasons for Allowance in 2 pages.
- (X) 27 sheets of formal drawings.
- (X) **COPY** of Recordation Form Cover Sheet; true and correct **COPY** of an Assignment in 13 pages.
- (X) Return prepaid postcard.

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The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.

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COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

United States Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's statement of reasons for allowance, which statement was made in the Notice of Allowability mailed on November 18, 2003, Applicant makes the following comments:

Applicant disagrees with the Examiner's statement to the extent there is any implication that the patentability of any of the current claims is founded on the recitation of one or a few features. Rather, it is the overall combination of features recited in each claim that makes each of the current claims patentable. For example, allowed Claim 1 recites:

1. A reagentless whole-blood analyte detection system capable of being deployed near a patient comprising:
 - a source capable of emitting a beam of radiation comprising a spectral band having a center wavelength;
 - a detector in an optical path of the beam;
 - a housing configured to house the source and the detector; and
 - a sample element situated in the optical path of the beam and configured to be filled with a sample, the sample element comprising:
 - a sample cell wall that does not eliminate transmittance of the radiation in the spectral band; and

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a sample cell;
further comprising a filtering system in the optical path of the beam, the filtering system configured to transmit the spectral band of radiation;
wherein the filtering system is configured to transmit radiation at least at about one of the following center wavelengths: 4.2 μm , 5.25 μm , 6.12 μm , 7.4 μm , 8.0 μm , 8.45 μm , 9.25 μm , 9.65 μm , 10.4 μm , 12.2 μm .

Claim 1 is allowable because the overall combination of features recited therein is patentable, and not simply due to the inclusion of one or a few features.

Regarding the Examiner's paraphrasing of the claims in his comments, Applicant notes that the Examiner's language is not accurate with respect to each of the independent claims. Accordingly, Applicant disagrees with the Examiner's comments to the extent that there is any inaccurate paraphrasing which does not reflect the allowed claims, and to the extent that there is any implication that the scope or meaning of the claims is something other than that defined by the claims' specific language.

Applicant further notes that the dependent claims are patentable not only because they depend from allowable base claims, but also because they recite further novel and non-obvious combinations of features or acts.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Feb. 17, 2004

By: Mark Kertz

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